

1 EDMUND G. BROWN JR.  
Attorney General of California  
2 MARC D. GREENBAUM  
Supervising Deputy Attorney General  
3 STEPHEN A. MILLS  
Deputy Attorney General  
4 State Bar No. 54145  
300 So. Spring Street, Suite 1702  
5 Los Angeles, CA 90013  
Telephone: (213) 897-2539  
6 Facsimile: (213) 897-2804  
*Attorneys for Complainant*  
7

8 **BEFORE THE**  
9 **BOARD OF REGISTERED NURSING**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. **2010-544**

13 **DARLENE H. UPCHURCH aka DARLENE**  
14 **UPCHURCH FRIEDMAN**

2243 Century Hill  
Los Angeles, CA 90067

**ACCUSATION**

Registered Nurse License No. 367338  
Nurse Anesthetist Advanced Certification No. NA-623

Respondent.

18 Complainant alleges:

19 **PARTIES**

20 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her  
21 official capacity as the Interim Executive Officer of the Board of Registered Nursing, Department  
22 of Consumer Affairs (Board).

23 2. On or about November 30, 1983, the Board issued Registered Nurse License  
24 No. 367338 to Darlene H. Upchurch aka Darlene Upchurch Friedman (Respondent). The  
25 Registered Nurse License was in full force and effect at all times relevant to the charges brought  
26 herein and will expire on July 31, 2011, unless renewed.

27 3. On or about June 5, 1984, the Board issued Nurse Anesthetist Advanced Certification  
28 No. NA-623 to Respondent. The Nurse Anesthetist Advanced Certification was in full force and

1 effect at all times relevant to the charges brought herein and will expire on July 31, 2011, unless  
2 renewed.

### 3 JURISDICTION

4 4. This Accusation is brought before the Board under the authority of the following  
5 laws. All section references are to the Business and Professions Code unless otherwise indicated.

### 6 STATUTORY PROVISIONS

7 5. Section 118, subdivision (b), provides that the suspension, expiration, surrender or  
8 cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary  
9 action during the period within which the license may be renewed, restored, reissued or  
10 reinstated.

11 6. Section 490 provides that a board may suspend or revoke a license on the ground that  
12 the licensee has been convicted of a crime substantially related to the qualifications, functions, or  
13 duties of the business or profession for which the license was issued.

14 7. Section 2750 provides that the Board may discipline any licensee, including a  
15 licensee holding a temporary or an inactive license, for any reason provided in Article 3  
16 (commencing with section 2750) of the Nursing Practice Act.

17 8. Section 2764 provides that the expiration of a license shall not deprive the Board of  
18 jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision  
19 imposing discipline on the license. Under section 2811, subdivision (b), the Board may renew an  
20 expired license at any time within eight (8) years after the expiration.

21 9. Section 2761 states, in pertinent part:

22 "The board may take disciplinary action against a certified or licensed nurse or deny an  
23 application for a certificate or license for any of the following:

24 "(a) Unprofessional conduct, . . .

25 "(d) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the  
26 violating of, or conspiring to violate any provision or term of this chapter [the Nursing Practice  
27 Act] or regulations adopted pursuant to it.

28 . . . .

"(f) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of a registered nurse, in which event the record of the conviction shall be conclusive evidence thereof. . . ."

10. Section 2762 states, in pertinent part:

"In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do any of the following:

• • • •

"(b) Use any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public or to the extent that such use impairs his or her ability to conduct with safety to the public the practice authorized by his or her license.

"(c) Be convicted of a criminal offense involving the prescription, consumption, or self-administration of any of the substances described in subdivisions (a) and (b) of this section, or the possession of, or falsification of a record pertaining to, the substances described in subdivision (a) of this section, in which event the record of the conviction is conclusive evidence thereof. . . ."

## REGULATORY PROVISIONS

11. California Code of Regulations, title 16, section 1444 states, in pertinent part:

“A conviction or act shall be considered to be substantially related to the qualifications, functions or duties of a registered nurse if to a substantial degree it evidences the present or potential unfitness of a registered nurse to practice in a manner consistent with the public health, safety, or welfare. . . .”

## COST RECOVERY

12. Section 125.3 provides that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Conviction of Substantially Related Crime)**

3 13. Respondent is subject to disciplinary action under sections 490 and 2761,  
4 subdivision (f), in conjunction with California Code of Regulations, title 16, section 1444, in that  
5 on or about April 9, 2008, Respondent was convicted of a crime substantially related to the  
6 functions or duties of a registered nurse which to a substantial degree evidences her present or  
7 potential unfitness as a registered nurse to practice in a manner consistent with the public health,  
8 safety, or welfare. The circumstances of the conviction are as follows:

9 a. On or about April 9, 2008, after pleading nolo contendere, Respondent was convicted  
10 of one misdemeanor count of violating Vehicle Code section 23152(b) [driving while having a  
11 0.08% or higher blood alcohol] in the criminal proceeding entitled *The People of the State of*  
12 *California v Darlene Upchurch* (Super. Ct. Los Angeles County, 2007, No. 8BV00228). The  
13 Court placed Respondent on 36-months probation, ordered her to perform five (5) days of  
14 Cal-Trans duty, complete a 9-month First-Offender Alcohol program, and pay undetermined  
15 pending restitution.

16 b. The circumstances underlying the conviction are that on or about November 1, 2007,  
17 Respondent while under the influence of alcohol was involved in a vehicle collision causing  
18 major damage to the front end of her vehicle. Respondent admitted to drinking wine prior to  
19 driving and Respondent had in her vehicle an open empty bottle of wine.

20 **SECOND CAUSE FOR DISCIPLINE**

21 **(Alcohol Related Conviction)**

22 14. Respondent is subject to disciplinary action under sections 2761, subdivision (a),  
23 and 2762, subdivision (c), on the grounds of unprofessional conduct, in that on or about April 9,  
24 2008, Respondent was convicted of criminal offenses involving alcohol. Complainant refers to  
25 and by this reference incorporates the allegations set forth above in paragraph 13, subdivisions (a)  
26 and (b), inclusive, as though set forth fully.

27 ///

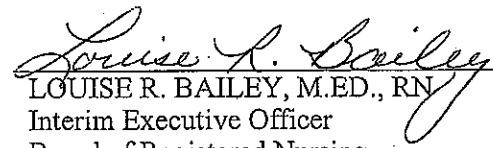
28 ///



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

4. Taking such other and further action as deemed necessary and proper.

DATED: 4/23/10

  
LOUISE R. BAILEY, M.ED., RN  
Interim Executive Officer  
Board of Registered Nursing  
Department of Consumer Affairs  
State of California  
*Complainant*

LA2010600059  
4/15/2010dmm  
50620953.doc